HON'BLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No.9875 of 2007

Dated 22nd October, 2007

Between

Ganesula Gangdhar Rao

…Petitioner

and

District Registrar-cum-Competent authority
Under Stamp Act, EG District, at Kakinada, and, anr.

…Respondents

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.9875 of 2007

Order:

In this writ petition, the petitioner has questioned the order dated 27-03-2004 passed by the Sub-Collector, East Godavari District, by which he has ordered impoundment of the document, i.e. sale agreement dated 10-08-1999, by collecting stamp duty of Rs.25,000/- and penalty of Rs.75,000/-, in exercise of powers under Section 31 and Article 6(B) of Schedule 1-A read with Section 40 of the Indian Stamp Act, 1899.

The petitioner is an applicant in case A.T.C.No.8 of 2001, filed under A.P. (A.A.) Tenancy Act, 1956 before the Tenancy Tribunal-cum-Principal Junior Civil Judge, Rajahmundry. In the said application, petitioner, in support of his claim, relied on agreement of sale dated
10-08-1999, but, however, the same was not in accordance with the Indian Stamp Act, 1899. When the said document was presented in evidence, the same was referred by the Tenancy Tribunal to the
Sub-Collector, East Godavari District, and on such reference, the impugned order, for impounding, was passed. The said order for

impounding the document is mainly questioned on the ground that the order passed by the Sub-Collector is without jurisdiction as he is not the authority conferred with such powers as per the provisions of the Indian Stamp Act, 1899.

It is submitted by learned counsel for the petitioner that under Section 38 of the Indian Stamp Act, 1899, District Collector is empowered to impound any instrument. 'Collector' is defined under Section 2(9) of the Indian Stamp Act, 1899, which reads as under:

"Collector means:

(a) within the limits of towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits the Collector of district; and

(b) includes a Deputy Commissioner and any officer whom the State Government may by notification in the Official Gazette, appoint in this behalf."

It is submitted by learned counsel for the petitioner that there is no notification by delegating powers to the Sub-Collector; in that view of the matter, the order is without jurisdiction. Reliance is placed by the learned counsel on the judgment of **G. Ramesh Vs. Revenue Divisional Officer, Nalgonda District**[1].

On the other hand, it is submitted by learned Government Pleader appearing for the respondents that the impugned order is passed only on the reference made by the Tenancy Tribunal; in that view of the matter, it cannot be said that the Sub-Collector is not having any jurisdiction.

From a reading of the provision under Section 38 of the Indian Stamp Act, 1899, it is clear that District Collector is empowered to impound any instrument, however as per the Section 2(9) of the Indian Stamp Acts, 1899, it also includes the Deputy Commissioner and any officer whom the State Government may by notification in the Official Gazette appoint in this behalf. In this case, it is not in dispute that there

is no such notification issued by the State Government appointing the Sub-Collector as an authority under Section 2(9) of the Indian Stamp Act, 1899 to perform the duties of the Collector. In the of **G. Ramesh** (supra) this court has held that when there is no notification issued by the State Government under Section 2(9)(b) or 76(A) of the Act delegating powers to R.D.Os., to exercise powers under Sections 33, 38 and 40 of the Act, any order passed by such authority is without jurisdiction. The said ratio laid down by this court in the aforesaid judgment squarely applies to the facts of this case and it is submitted by the learned Government Pleader appearing for respondents that there is no notification issued by the Government delegating powers to the

Sub-Collector to perform the functions of Collector under Sections 33, 38 and 40 of the Act. In that view of the matter, the impugned order is without any authority of law and is liable to be set aside. Therefore, the order dated 27-03-2004 passed by the Sub-Collector, East Godavari District, is set aside. However, it is made clear that it is open for the Tenancy Tribunal to refer the document to the competent authority under the provisions of the Indian Stamp Act, 1899 for impounding the same.

The writ petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY.

October 22, 2007
MSNR/MRR

[1] **2006 (6) ALD 136**